

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-245

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Hayneville, Alabama)

RM-8316

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 26, 1995;

Released: August 4, 1995

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 8 FCC Rcd 7022 (1993), issued in response to a petition filed by R. J. Miller ("petitioner") proposing the allotment of FM Channel 300A to Hayneville, Alabama, as that community's first local aural transmission service. Petitioner filed comments requesting withdrawal of his proposal. Petitioner also filed a counterproposal,¹ followed by supplemental comments.² 8 No other comments were received.

¹ Pursuant to the discussion in paragraph 2, *infra*, petitioner's counterproposal was not acceptable for consideration. Therefore, it was not placed on Public Notice.

² Petitioner's supplemental comments were not accompanied by a motion to accept. The Commission's Rules do not contemplate the acceptance of pleadings filed beyond the comment cycle unless specifically requested or authorized by the Commission. See Section 1.415(d) of the Commission's Rules. In this instance, neither criteria is applicable. However, we have reviewed the supplemental comments as a discretionary matter to determine if, on the basis of the information contained therein, petitioner's proposal could be accommodated without prejudicing any other pending request. We find that it cannot. Petitioner has requested dismissal of his counterproposal, and reinstatement of his original interest in the allotment of Channel 300A to Hayneville, based upon changed circumstances. In that regard, petitioner asserts that the FAA recently sanctioned the construction of a structure for cellular telephone use in an area beyond Danley Field. As a result petitioner asserts that Channel 300A can be accommodated in the vicinity of the cellular site, from which it appears there would also be no EMI interference concerns. Therefore, petitioner seeks a change in the reference coordinates for Channel 300A at Hayneville to specify a site at coordinates 32-15-09 and 86-29-20. However, we have determined that site to be 2 kilometers (1.24 miles) short spaced to the reference coordinates for Channel 299A, Georgiana, Alabama, at 31-39-31 and 86-44-22, and 16.4 kilometers (10.2 miles) short spaced to the pending one-step application of Station WWGA(FM), Georgiana, specifying Channel 299C2 at coordinates 31-27-08 and 86-37-07 (File No. BPH-9503091A), which is entitled to cut-off protection. See *Conflicts*

2. In initial comments, petitioner requested dismissal of his proposal to allot FM Channel 300A to Hayneville, Alabama, premised upon inherent technical deficiencies associated with the frequency.³ Petitioner states that according to FAA consultants, the close proximity of Danley Field (the Montgomery, Alabama, municipal airport), would limit Channel 300A to an antenna height in any fully spaced site to no more than 74.6 meters. Petitioner claims that based upon the height limitation, the requirements of Section 73.315 of the Commission's Rules could not be accommodated on Channel 300A. Additionally, petitioner states that as Channel 300 is adjacent to the aeronautical radio band, electromagnetic interference would be created if that allotment were made to Hayneville.

3. In separate comments filed simultaneously with his withdrawal request, petitioner counterproposed, *inter alia*, the allotment of Channel 246A to Hayneville, Alabama.⁴ However, since petitioner has requested dismissal of his proposal to allot FM Channel 300A to Hayneville, his counterproposal is not mutually exclusive with that proposal.⁵ Moreover, as discussed in footnote 4, *supra*, technical infractions contained in petitioner's counterproposal preclude its acceptance in the context of a separate *Notice of Proposed Rule Making*.

4. As stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted. In the absence of such an expression of interest, it is the Commission's policy to refrain from allotting a channel. As a result of the petitioner's withdrawal of interest and in the absence of any other acceptable expression, the request to allot Channel 300A to Hayneville, Alabama, will be dismissed. See *Vail, Colorado*, 9 FCC Rcd 7820 (1994); *Gillman, Illinois*, 6 FCC Rcd 2197 (1991), and the Appendix to the *Notice*.

between Applications and Petitions for Rulemakings to Amend the FM Table of Allotments, MM Docket No. 91-348, 7 FCC Rcd 4917 (1991). Therefore, petitioner's supplemental comments to reinstate his original rule making request cannot be considered.

³ Pursuant to the requirements of Section 1.420(j) of the Commission's Rules, petitioner provided a statement that he has not been offered nor sought any monetary compensation in exchange for withdrawing his expression of interest in this proceeding.

⁴ Petitioner also requested the substitution of Channel 226A for Channel 246A at Millbrook, Alabama, and modification of the license for Station WMCZ(FM), Channel 246A, Millbrook, as well as the substitution of Channel 300A for Channel 247A at Orrville, Alabama, and modification of the authorization for Station WJAM-FM, Channel 247A accordingly. Station WJAM-FM would be required to relocate its transmitter site, which it agreed to do. However, petitioner's engineering studies do not indicate for allotment purposes, that Station WJAM-FM could be accommodated on Channel 300A at Orrville consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules. Moreover, we note that the ownership of Station WJAM-FM has changed and there is no indication from the new permittee that it is willing to effectuate the changes necessary to accommodate the petitioner's proposal. Therefore, petitioner's proposal is technically defective and cannot be considered.

⁵ A counterproposal is a proposal for an alternative and mutually exclusive allotment or set of allotments in the context of the proceeding in which the proposal is made. See, e.g., *Implementation of BC Docket 89-90 to Increase the Availability of FM Broadcast Assignments*, 5 FCC Rcd 931 (1990).

5. In consideration of the above, IT IS ORDERED, That the request of R. J. Miller (RM-8316), proposing the allotment of FM Channel 300A to Hayneville, Alabama, IS DISMISSED.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
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